

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRACY J. HEDGE,)	
)	No. CV-10-99-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISMISS
)	
MICHAEL J. ASTRUE, Commissioner)	(Ct. Rec. 9.)
of Social Security,)	
)	
Defendant.)	
)	
)	

On April 8, 2010 plaintiff filed a complaint (Ct. Rec. 1, 17 at 2). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8). On June 10, 2010, defendant moved to dismiss for lack of jurisdiction due to plaintiff's untimely filed complaint (Ct. Rec. 8, 10). On July 16, 2010, plaintiff filed a response seeking equitable tolling (Ct. Rec. 17).

Plaintiff acknowledges her civil complaint was due on April 2, 2010, but not filed until April 8, 2010 (Ct. Rec. 17 at 2). Citing *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976), plaintiff argues the equities of her illness and other reasons are so great that deference to the agency's judgment is inappropriate, making this the unusual case warranting tolling (Ct. Rec. 17 at 2-3).

Defendant points out the notice of the decision of the Appeals Council informed plaintiff she had no more than 60 days from the date of receipt to file a civil complaint (Ct. Rec. 10 at

1 2; 10-1 at 2-3), except that the time could be extended by the
2 Appeals Council for good cause (Ct. Rec. 10-1 at 2). Plaintiff
3 failed to ask for an extension.

4 After reviewing the record and the briefing by the parties,
5 the court **GRANTS** defendant's motion to dismiss (Ct. Rec. 9) for
6 lack of jurisdiction.

7 Accordingly,

8 **IT IS ORDERED** that the motion (Ct. Rec. 9) is **granted**.

9 DATED this 21st day of July, 2010.

10 s/ James P. Hutton
11 JAMES P. HUTTON
12 UNITED STATES MAGISTRATE JUDGE
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